

M. A. SCHOFMAN

IBLA 73-340, 73-341

Decided October 4, 1973

Consolidation of two appeals. One appeal from a decision from a Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas lease M-1084; another appeal from a decision by a Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W-0322021. Both leases were terminated by operation of law for failure to pay the annual rental on or prior to the anniversary date.

Decisions affirmed.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: William B. Collister, Esq., Denver, Colorado, for the appellant.

OPINION BY MR. RITVO

M. A. Schofman appeals from decisions of the Wyoming and Montana State Offices, Bureau of Land Management, refusing to grant reinstatement of his oil and gas leases M-1084 and W-0322021, terminated by operation of law for failure to pay the annual rental on or before the anniversary date.

The rental payments on both leases were due on or before February 1, 1973. The envelope containing the rental for the Montana lease was postmarked February 1, 1973, and was mailed from Miami Shores, Florida. It was not received by the State Office until

a few days later. The envelope containing the rental for the Wyoming lease was postmarked February 1, 1973, from Miami Shores, Florida, and was received on February 5. Consequently, under section 31 of the Mineral Leasing Act, 30 U.S.C. § 188(b) (1970), the leases terminated by operation of law.

The issue in these appeals is whether the appellant's failure to pay the annual rentals on time was justifiable or not due to a lack of reasonable diligence. See Louis Samuel, 8 IBLA 268 (1972).

The appellant contended in his initial petitions for reinstatement that the failure to pay the rentals on or before the due date was not due to a lack of reasonable diligence. Schofman believed that a clerk in his office actually mailed the rental checks on or before January 26, 1973. He further argued that the rental payments would have been received at the proper Land Offices on or before February 1, 1973, had the mails been delivered in the ordinary course of business.

The State Offices, having found that the rental checks were written and signed by Schofman on January 31, 1973, and mailed from Florida on the day that they were due, made a determination that reasonable diligence had not been exercised in making the payments. Consequently, the petitions for reinstatement were denied and the leases were held to have terminated.

In these appeals, Schofman brings up a new contention. He argues that an employee who handled appellant's oil and gas rental payments left the employment of the appellant without calling attention to the fact that the rental payments were due. Schofman argues that this failure of the employee either to make the rental payments or to notify the appellant that the rental was due "was a sufficiently extenuating circumstance to make a justifiable delay in the payment of this rental."

We do not find this argument persuasive. Under the circumstances of these cases, we find that the failure to pay the advance rental payments timely was not justifiable. See Norman K. Husted, 12 IBLA 341 (1973); Monturah Company, 10 IBLA 347 (1973).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Martin Ritvo
Member

We concur:

Anne Poindexter Lewis
Member

Joan B. Thompson
Member

